BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BELINDA K. SANDERS[1]	)	
Claimant	)	
VS.	)	
	)	
STATE OF KANSAS	)	Docket No. 1,045,376
Respondent	)	
AND	)	
	)	
STATE SELF-INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Respondent requested review of Administrative Law Judge Kenneth J. Hursh's August 29, 2012 Award. The Board heard oral argument on January 16, 2013.

APPEARANCES

Steffanie L. Stracke, of Kansas City, Missouri, appeared for the claimant. Bryce D. Benedict, of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.[2] Additionally, the parties agreed at oral argument that the Appeals Board may consider and cite the AMA *Guides*,[3] (hereinafter *Guides*).

---

[1] Claimant's current surname, effective March 1, 2010, is "McClendon."

[2] Judge Hursh did not consider the preliminary hearing exhibits when he issued the Award. The Appeals Board does not consider the preliminary hearing exhibits part of the record.

[3] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment*, (4th ed.). All references are to the 4th ed. of the *Guides* unless otherwise noted.

ISSUES

Claimant's application for hearing alleges injuries to her bilateral upper extremities, right lower extremity and back on July 14, 2008. She also alleges a neck injury and cognitive disability from the effects of her multiple medications. Respondent admits claimant suffered a compensable injury to her right lower extremity, but disputes claimant's assertion that she developed bilateral carpal tunnel syndrome as a result of treatment she received for her right foot, specifically crutch ambulation. Respondent contends claimant's carpal tunnel syndrome predated her use of crutches. Respondent also disputes claimant's allegations of low back or neck impairment and cognitive disability.

Judge Hursh found claimant sustained a 27.75% functional impairment to the lower extremity and 12.5% to each upper extremity by giving equal weight to the ratings of both testifying physicians, William Hopkins, M.D., and Chris Fevurly, M.D. Judge Hursh also found claimant was permanently and totally disabled. Respondent argues claimant can work, but simply chooses to remain at home. Claimant contends Judge Hursh's award should be affirmed, as she proved she is permanently and totally disabled.

The issue for the Board's review is:

What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant was employed as a registered nurse for the respondent for approximately five years. Her duties included patient care, admitting patients, and typing and handwriting assessments. In December 2007 or January 2008, claimant started experiencing numbness and tingling in her upper extremities, which she attributed to typing and handwriting duties. Claimant notified her supervisor, Roger Obermeier, when the symptoms initially started. She did not seek treatment. She continued to work and perform her regular job duties.

On July 14, 2008, claimant was running in response to an emergency call when she experienced a sudden and acute onset of pain in her right foot shooting up her right leg. She was initially treated at Miami County Medical Center and provided crutches.

Claimant testified that she was on crutches during the months of August, September and October 2008. During this time, claimant was on sedentary light duty work for respondent, which consisted of reviewing nursing charts and documenting errors. Claimant estimates 75% of her time was spent writing. Claimant asserted there was an increase in the numbness and tingling she was having in her upper extremities as a result of weight bearing on crutches. Claimant's last date of employment with respondent was October 29, 2008. Respondent had no additional accommodated work to offer claimant.

Claimant treated with occupational medicine, orthopedic and pain management physicians that had various opinions as to claimant's diagnosis, including whether she had reflex sympathetic dystrophy or complex regional pain syndrome (CRPS).[4]

On July 7, 2009, claimant was seen by Chris Fevurly, M.D., at respondent's request. Dr. Fevurly is board certified in internal and preventative medicine as well as an independent medical examiner. Claimant complained that in the three months prior to July 2009, the numbness and tingling in her arms had progressively worsened. Claimant reported her hand symptoms were present since she started using the crutches nearly one year earlier. Dr. Fevurly diagnosed claimant with chronic right foot and ankle pain, bilateral upper extremity numbness and tingling, chronic cervical and low back pain, preexisting depression and bipolar disorder and multiple psychosocial risk factors. Dr. Fevurly opined the original injury was a likely aggravation of right heel plantar fasciitis. Dr. Fevurly noted claimant did not have CRPS. Additionally, Dr. Fevurly did not support the placement of a posterior column stimulator until a firm diagnosis of CRPS could be established. Dr. Fevurly indicated claimant could return to sedentary duties immediately.

On August 17, 2009, claimant was seen by William Hopkins, M.D., a board certified orthopedic surgeon, for an independent medical evaluation at her attorney's request. Dr. Hopkins opined claimant's carpal tunnel syndrome symptoms began as a result of her repetitive work activities and were aggravated by her use of crutches.

On November 11, 2009, Greg Horton, M.D., performed surgery to the right lower extremity which claimant testified included a tarsal tunnel release. Claimant was later referred to Zhengyu Hu, M.D., who respondent authorized to provide treatment.

A preliminary hearing was held on December 2, 2009 concerning claimant's request for treatment of bilateral carpal tunnel syndrome. Claimant testified her carpal tunnel syndrome was worsened by use of crutches. Judge Hursh ruled claimant's use of crutches aggravated her carpal tunnel syndrome and such additional injury was the direct and natural result of her original injury.

Brian Divelbiss, M.D., performed bilateral carpal tunnel releases on May 10, 2010. Despite the surgeries, claimant has upper extremity discomfort, numbness, tingling and decreased grip strength. She will drop things.

Claimant continued treating with Dr. Horton. On March 30, 2011, claimant underwent surgery for a peripheral nerve stimulator by Dr. Horton. Dr. Horton restricted claimant to sedentary work only, on a permanent basis. Claimant continued to be followed periodically by both Dr. Horton and Dr. Hu with continued pain.

---

[4] The medical opinions from these doctors that were never offered into evidence or stipulated as admissible have not been considered by the Appeals Board.

Dr. Hopkins evaluated claimant again on November 22, 2011. Based on the *Guides*, Dr. Hopkins rated claimant as having a 15% whole person impairment due to her right ankle injury, a 20% impairment to each upper extremity, a 5% whole person impairment for her neck and a 10% whole person impairment for her low back. Dr. Hopkins attributed claimant's neck and low back conditions to using crutches.

Dr. Fevurly evaluated claimant again on March 29, 2012. Based on the *Guides,* Dr. Fevurly rated claimant as having an 18% impairment to the right lower extremity and a 5% impairment to each upper extremity. Dr. Fevurly indicated claimant could do light work, lifting up to 15 pounds occasionally. He recommended she sit 90% of her work time, with standing and walking no more than 10-15 minutes nonstop.[5]

Michael J. Dreiling, a vocational expert, evaluated claimant and prepared an April 17, 2012 report. Mr. Dreiling noted claimant had 100% wage loss. He opined claimant could not do any of her previous work due to problems with sitting, standing and walking and her need to alternate sitting and standing. Although claimant had sedentary restrictions, none of her past work was sedentary. Mr. Dreiling stated claimant was essentially and realistically not employable because of her pain and her inability to focus and concentrate due to multiple medications.

At the June 21, 2012 regular hearing, claimant testified that she has burning and swelling in her right foot, an occasional burning sensation in her right thigh, low back pain caused by abnormal gait, left hip pain, and a 50 pound weight gain due to inactivity. She associated all of these problems with her injury. She testified that medications prescribed by Dr. Hu to treat her injury made her dizzy, tired and sedated, in addition to causing decreased memory, scattered thoughts and inability to focus or concentrate.

Claimant testified she pretty much stays at home and does not walk much around the house. She is on long-term disability through KPERS. She applied for social security disability and has not looked for work. She doubted any job would allow her to work with numb hands and the need to constantly change positions.

Dr. Hopkins testified claimant's foot injury resulted in right leg CRPS, in addition to neck, back and bilateral carpal tunnel syndrome injuries. Dr. Hopkins testified claimant had very significant loss of sense of touch in her hands and some grip strength deficit. He testified claimant is "absolutely"[6] taking a significant amount of medication for her injuries and all of the medications have side effects, including difficulty thinking, impaired memory, concentration and thought organization, as well as sleepiness.

---

[5] Dr. Fevurly amended his opinion at his deposition saying that instead of 90% sitting, claimant could sit 50-60% each hour which would allow her to frequently be on her feet.

[6] Hopkins depo. at 30.

Dr. Hopkins recommended sedentary work restrictions. Dr. Hopkins opined claimant was unable to perform any of the tasks identified by Mr. Dreiling because of her physical injuries – including her ability to stand and walk for only limited time, in addition to her arm difficulties – not based on "a cerebral functional basis."[7] He also noted claimant likely could not function adequately on a day-to-day basis in the work place due to constant pain and use of pain medications. Dr. Hopkins opined that claimant was permanently and totally disabled based on her physical injuries and the side effects of her medication.

Dr. Fevurly testified that claimant did not have neck or low back impairment stemming from her work injury. He testified that the diagnosis of CRPS is controversial. Dr. Fevurly noted that claimant had "absolutely none of the criteria for Complex Regional Pain Syndrome of the lower extremity."[8] Dr. Fevurly opined that claimant was unable to perform five of the 12 tasks identified by Mr. Dreiling. He also noted that claimant "undoubtedly"[9] was having cognitive and concentration difficulties based on her sedative medication. He "completely believed" claimant's complaint of feeling sedated based on her medication usage.[10] He wanted claimant weaned off her drugs. He stated having her on drugs that affected her cognition was a "major mistake"[11] and "bad medicine."[12]

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part:

> In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends.

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows:

> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

---

[7] *Id.* at 31-32.

[8] Fevurly depo., Ex. 3 at 4.

[9] *Id.*, Ex. 3 at 3.

[10] *Id.* at 46-47, 52-53.

[11] *Id.*, Ex. 3 at 6.

[12] *Id.* at 45, 52; see also p. 60 (Dr. Fevurly characterized claimant's prescribed medication as "medical mismanagement").

The existence, nature and extent of a claimant's disability is a fact question.[13] The trier of fact is not bound by medical evidence and must make its own determination of claimant's disability based on all the evidence, including deciding which testimony is more accurate and may adjust the medical, layperson and other testimony relevant to the question of disability.[14]

A claimant shall not recover for the aggravation of a preexisting condition, except to the extent the work-related injury causes increased disability.[15] A work-related aggravation, acceleration or intensification of a preexisting condition is compensable.[16] It is respondent's burden to prove claimant's preexisting impairment.[17] Any preexisting functional impairment must be determined utilizing the *Guides*.[18]

K.S.A. 2008 Supp. 44-508(e) states, in part:

> "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.

K.S.A. 44-510c(a)(2) defines permanent total disability as follows:

> Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

---

[13] *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995), *rev. denied* 259 Kan. 927 (1996).

[14] *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 784-86, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

[15] K.S.A. 2008 Supp. 44-501(c).

[16] *Bryant v. Midwest Staff Solutions, Inc.*, 292 Kan. 585, 589, 257 P.3d 255 (2011).

[17] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, 96, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

[18] *Webb v. Rose Villa, Inc.*, No. 1,047,270, 2012 WL 2890460 (Kan. WCAB June 4, 2012).

ANALYSIS

The Appeals Board adopts the findings of Judge Hursh, with any modifications by the Board being underlined:

> **Nature and extent of disability.** The claimant was employed as a registered nurse at a state mental hospital. On July 14, 2008 she was running to respond to an emergency call when she experienced a sudden pain in her right foot with shooting pains into her right leg.
>
> The respondent admitted the claimant had a work related injury to the right lower extremity. The injury did not lend itself to clear diagnosis. The claimant referred to it as tarsal tunnel syndrome which developed into a complex regional pain syndrome (CRPS). The physician who testified on the claimant's behalf, Dr. Hopkins, did not document tarsal tunnel syndrome, but noted a defect in the interior talar fibular ligament on MRI and agreed with the CRPS diagnosis. Dr. Fevurly, who examined the claimant at the respondent's request, termed the injury chronic nonspecific right foot and right ankle pain. Fevurly noted the surgeries performed on the claimant's foot (by Dr. Horton) were targeted at peripheral nerve impingement sites, but Fevurly said the operative report was not clear on the types of abnormalities, if any, the surgeon encountered. Dr. Fevurly did not think the claimant had sufficient findings to justify a CRPS diagnosis.
>
> At any rate, both physicians provided permanent impairment ratings for the lower extremity. Dr. Hopkins opined a 15% whole person impairment from the AMA *Guides to the Evaluation of Permanent Impairment*, 4th Edition, based on gait abnormality. The particular table used by Hopkins only expressed percentages in terms of the whole person. Taking notice of the *Guides*, 4th Edition's 40% lower extremity to whole person conversion factor, 15% to the whole person equates to 37.5% impairment of the extremity. Dr. Fevurly rated the claimant's impairment at 18% of the lower extremity based on muscle atrophy, peripheral nerve entrapment, and dysthesias. While the physicians came to different percentages, both employed the *Guides*, 4th Edition as their standard, and the opinions were considered equally credible. It is held the claimant's permanent impairment from the foot injury is the mean of the two opinions, 27.75% of the right leg.
>
> The claimant said she developed low back pain at some point following the foot injury and recalled reporting it to Dr. Hu when she first started seeing him for pain management. Records showed the claimant started seeing Dr. Hu in April, 2010. A separate injury which occurs as a direct and natural consequence of a work injury is considered compensable as part of the original work injury, *see Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976), so the question is whether the claimant's low back symptoms were a consequence of the foot injury.

Dr. Hopkins opined that the back injury was related to the work accident, but his rationale was hard to follow. Hopkins seemed to think the low back was injured in the original accident and made reference to medical records referring to a back injury as early as October, 2008. However, Hopkins own notes about the records, which were from a Dr. Wilkinson, referencing other records from a Dr. Danda, were that Danda believed the claimant's lower extremity pain was related to a back injury, but that Danda, or perhaps Wilkinson, described "absolutely no back pain without any additional sciatic symptoms." The records which Dr. Hopkins thought supported his conclusion that there was a back injury early on did not support his conclusion. Hopkins further thought the fact the claimant received epidural injections proved there was a back injury from the beginning. However, Dr. Fevurly explained the particular injections the claimant received were sympathetic blocks designed to treat the CRPS in the right leg, not a nerve entrapment originating in the spine. Hopkins also tried to relate the claimant's back pain, in part, to her use of crutches following the injury. However, the claimant's crutch use, according to her preliminary hearing testimony, was in the fall of 2008, long before any back symptoms appeared. Dr. Hopkins failed to provide a credible explanation how the claimant suffered a back injury in the original accident or as a consequence of the foot injury suffered in the accident.

Dr. Fevurly did not think the claimant's complaints of low back pain are related to the leg injury, especially when he considered the claimant's testimony that she spends very little time on her feet due to the injury and side effects of pain medication. The claimant does still use assistive devices for walking, but the record failed to prove by a preponderance of credible evidence that she suffered a low back injury from the July 14, 2008 accident or as a direct natural consequence of the foot injury received in that accident.

Dr. Hopkins also said the claimant had an injury to the cervical spine, which he attributed to the claimant using crutches. He assigned a 5% whole person permanent impairment rating for the neck injury. The claimant mentioned neck pain during her two examinations by Dr. Hopkins, in August, 2009 and November, 2011. Dr. Fevurly's report from his July 7, 2009 examination said the claimant reported sporadic neck pain of 3-4 months duration. However, the claimant did not mention having neck pain in either the December, 2009 preliminary hearing or the June, 2012 regular hearing. Looking at the whole record, it appears the claimant has had occasional complaints of neck pain since the injury and no clear temporal relationship between these complaints and the crutch use has been documented. The record failed to show a neck injury as a consequence of the July 14, 2008 accident and further failed to show the claimant's neck symptoms are of a permanent nature.

The final alleged injury is bilateral carpal tunnel syndrome. At the preliminary hearing the claimant testified that, as a nurse, she is familiar with carpal tunnel syndrome symptoms and that she started noticing such symptoms in both hands prior to the work injury. She associated the symptoms with keyboarding and handwriting required of her registered nurse position. The claimant said she reported the symptoms to a supervisor prior to the July 14, 2008 accident, but never pursued any medical treatment for the condition. She also said the symptoms increased significantly while she was weight bearing on crutches following the foot injury. Dr. Hopkins felt the crutch use caused compression on the median nerve and contributed to the bilateral carpal tunnel syndrome, and Dr. Fevurly said it was possible that using crutches could aggravate carpal tunnel symptoms.

. . . The preponderance of the evidence showed that as a natural consequence of the work related foot injury the claimant aggravated her bilateral carpal tunnel syndrome. Bilateral carpal tunnel syndrome is therefore part of the work related injury in this case.

Both Dr. Hopkins and Dr. Fevurly provided permanent impairment ratings for the carpal tunnel syndrome. Hopkins rated 20% impairment to each upper extremity, while Fevurly rated 5% to each. The record did not show any particular flaw or merit to either opinion, so they were considered equally credible. It is held the claimant's permanent functional impairment from the carpal tunnel syndrome is the mean of the two ratings, or 12.5% to each forearm.

The respondent argued that some or all of the impairment should be pre-existing since the claimant had symptoms pre-existing the July 14, 2008 accident. This might be true, but there was simply insufficient information from which either physician could rate prior impairment, if any. The record did not provide credible evidence of pre-existing impairment.

The claimant contended she is entitled to permanent total disability benefits. The claimant's work injury involved injury to parallel scheduled members, both forearms, and a combination of scheduled members, the forearms and leg. Therefore, according to *Casco v. Armour Swift-Eckrich*, 283 Kan. 508 (2007) the claimant's permanent disability must first be evaluated under K.S.A. 44-510c. That section provides a rebuttable presumption of permanent total disability for loss of use of multiple scheduled members. In this case, the claimant returned to accommodated employment with the respondent for a short time following the injury, but the respondent did not provide her accommodated employment long term and she was terminated around the end of 2009. The claimant has been unemployed since she last worked for the respondent.

The claimant testified she does not think she is capable of working and has not looked for work. She attributed her inability to work to difficulties walking due to the work injury, limitations in ability to use her hands, due to the carpal tunnel syndrome, and side effects of numerous pain medications she is taking, which interfere with her ability to concentrate.

Dr. Hopkins considered the claimant permanently totally disabled. He reviewed the claimant's 15 year work task history as complied by vocational expert, Michael Dreiling, and felt the claimant was incapable of performing any of the tasks. Hopkins attributed the claimant's inability to work to her only being able to stand and walk minimally, having limited use of her upper extremities, and limited ability to lift or carry items. Dr. Fevurly felt the claimant could work if she was seated a majority of the time, and not on her feet for more than 10 to 15 minutes duration more than twice per hour. He also limited her to 15 pounds lifting occasionally. Considering the work task history from Michael Dreiling, Dr. Fevurly opined the claimant had lost the ability to perform . . . 5 out of 12, of the listed tasks. Fevurly apparently loosened his previously-stated restrictions when he considered the task list. On cross-examination he allowed that there were several more tasks that could have been excluded if his stated restrictions were strictly applied.

Finally, Michael Dreiling said, in his opinion, the claimant would not be able to compete for, obtain, or maintain any type of employment in the open labor market. His opinion was based on the claimant's physical limitation to sedentary work as well as the impact of medication side effects on her ability to concentrate. The claimant listed the many medications she is taking at Dr. Hu's direction and her perception of the side effects. Dr. Hu is a physician authorized by the respondent. The record did not document the known side effects of the particular medications or their effects on the claimant other than her report of the effects. The respondent pointed out the claimant was able to testify in hearings and participate in examinations by Dr. Hopkins and Dr. Fevurly, and Michael Dreiling's interview, without any clear evidence of cognitive difficulties. This was true, but the claimant's ability to communicate alertly during relatively short and infrequent hearings and examinations did not contradict her assertion the drug side effects would interfere with her ability to be employed full time.

The preponderance of the evidence failed to rebut the K.S.A. 44-510c presumption of permanent total disability. The claimant shall be awarded permanent total disability benefits. Additionally, claimant is permanently and totally disabled in accordance with the facts that she has bilateral arm impairment, right leg impairment and cognitive disability due to her multiple medications, which include Morphine and Percocet.

Temporary total benefits. The respondent contended it should not be liable for any temporary total disability benefits it paid because of the claimant's carpal tunnel syndrome. The record did not reveal which periods of temporary total this concerned, but the finding that carpal tunnel syndrome is compensable means the respondent is liable for those benefits.

The claimant argued she should have received temporary total benefits continuously through two gaps in such benefits. Temporary total was paid from July 23 through July 28, 2008, then stopped until November 17, 2008. Claimant requested additional temporary total from October 29 through November 16, 2008. There was nothing in the record to explain the cause for this gap, although the claimant was employed, at least temporarily, in an accommodated position following the injury. Perhaps the accommodated employment was during this disputed period. It is the employee's burden to prove the conditions on which the employee's right to benefits depends and the record did not contain evidence of the claimant's work status in the disputed period. The claimant failed to prove she was entitled to temporary total disability from October 29, 2008 to November 17, 2008.

The second gap in temporary total was from and including February 6 [through] March 7, 2011. The record contained some information on this disputed period. The claimant testified her benefits were stopped because she contracted a MRSA infection, which in turn caused Dr. Hu to suspend his pain management treatment until the infection cleared. The apparent, though unstated, argument from the respondent's perspective was that this short delay in treatment for an unrelated medical condition correspondingly delayed the claimant's date of maximum medical improvement and termination of temporary disability. This argument is an assumption not supported by any evidence in the record. The claimant's testimony showed she was considered temporarily totally disabled while under the care of Dr. Hu and failed to show the brief delay in treatment ultimately delayed her release from treatment. The claimant was entitled to temporary total benefits in the 4.29 weeks from and including February 6 [through] March 7, 2011.

Future medical. The claimant continues to use a peripheral nerve stimulator for pain control, and continues to take pain medications. The claimant also wears a foot brace which Dr. Hopkins said will require periodic replacement. The record proved the claimant will need medical treatment for the work injury post-award. If it has not already done so, the respondent shall designate to the claimant an authorized physician to monitor and provide medications and address any needs regarding the foot brace and peripheral nerve stimulator.

. . .

1. The respondent shall pay all authorized medical expenses related to treatment of the claimant's injuries subject to the Kansas workers compensation schedule of medical fees. All known medical expenses to date, totaling $166,721.07, have been paid. The respondent shall provide the claimant post-award medical treatment.

2. The respondent and insurance carrier shall pay the claimant 144.71 weeks of temporary total disability at the rate of $529 per week, a total of $76,551.59, of which $74,287.47 has already been paid. The balance of $2,264.12 is due and owing and shall be paid in one lump sum. Claimant is also entitled to 17.14 weeks in permanent partial disability benefits based on her functional impairment for the time periods July 14 through July 22 and July 29 through November 16, 2008 at the rate of $529 totaling $9,067.06, which is due and owing and shall be paid in one lump sum.

3. The respondent and insurance carrier shall pay the claimant permanent total disability benefits at the rate of $529 per week from until the total amount expended for temporary total and permanent total disability reaches the statutory maximum of $125,000. As of January 24, 2013, the remaining permanent total benefits totaling $39,381.35 are due and owing and shall be paid in one lump sum. The entire $125,000 award is currently due and owing.

CONCLUSION

The Appeals Board finds Judge Hursh's Award should be affirmed in all respects, save for the minor modifications listed above.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Hursh dated August 29, 2012, is affirmed with the minor modifications listed under the section titled "ANALYSIS."

IT IS SO ORDERED.

Dated this _____ day of January, 2013.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Steffanie L. Stracke, Attorney for Claimant
sstracke@etkclaw.com

Bryce D. Benedict, Attorney for Respondent and its Insurance Carrier
bbenedict@kdheks.gov

Honorable Kenneth J. Hursh, Administrative Law Judge